

Message

**From:** Johnson, Kathleen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D36DE0CD8EE14FF6A6AA2F1DF9B159F6-KJOHNS05]  
**Sent:** 4/20/2017 9:16:40 PM  
**To:** Moutoux, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=574b3a85014d46d3965b59700a04a55e-NMOUTOUX]  
**Subject:** RE: for your eyes only

We can talk tomorrow. \

## Deliberative Process / Ex. 5

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9  
75 Hawthorne Street ENF-1  
San Francisco, CA 94015  
415/972-3873  
[johnson.kathleen@epa.gov](mailto:johnson.kathleen@epa.gov)

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**From:** Moutoux, Nicole  
**Sent:** Thursday, April 20, 2017 2:04 PM  
**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Subject:** Re: for your eyes only

## Deliberative Process / Ex. 5

You can call me if you'd like. I will be in tomorrow.

Nicole G. Moutoux  
415-271-0701

On Apr 20, 2017, at 1:04 PM, Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)> wrote:

## Deliberative Process / Ex. 5

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**From:** Tomiak, Robert  
**Sent:** Thursday, April 20, 2017 10:15 AM

To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>

Subject: RE: R9 weekly report

Kathleen,

I have a few thoughts and suggestions to offer. First and foremost, I appreciate the recognition that this needs to be a tri-party decision to elevate to the Administrator. My concern (and reaction) was the issue paper going to the political team without yet having that higher level buy in from all; specifically noting that many of the concerns and a decision to refer are seemingly tied to a USACE permit decision which hasn't yet happened.

I have spoken with Ted;

#### **Deliberative Process / Ex. 5**

#### **Deliberative Process / Ex. 5**

#### **Deliberative Process / Ex. 5**

While he is disappointed with the timing and nature of the USFS letter, I have asked Ted to seek a federal position (meaning getting USFS buy in) on what date triggers the clock, the date of the letter or the date you all received it. I think it is reasonable to ask all parties to use the latter; Ted was inclined to agree and will return an answer to us; concurrent to thinking through other options that may be available to all of us. Using the date received would at least shift our decision date from next Friday to May 5<sup>th</sup>; giving us all more time to staff/vet this.

These are a few of our concerns that I'd appreciate your thoughts on:

- The majority of our hard issues are related to the 404 permit process. Given that the permit action/decision has not occurred, and that a reasonable premise is that our issues would have to be resolved via that process for a permit to be issued, we seem to be implying two points: we don't trust the USCAE to make the right decision on the 404 permit and we are prepared to veto their decision (and does OW agree?).
- We express concerns related to habitat and endangered species. Hasn't a BO already been issued with a non-jeopardy decision and imposed additional mitigation? If so, we seem to be making a similar statement about our lack of trust in F&WS to adequately perform their role.
- The State seems to not share our concerns on water quality impacts; I'm not clear on our points (really want to see all the correspondence on this topic) but it seems that the State disagreed and provided their views in the form of a reclama, which we have not yet responded to. In any event, your draft letter is not clear on the water quality impacts and what our expectations of USFS are.
- We conclude with what appears to be a message that we do not believe there is any way in which the project can proceed. We seem to have rejected all ideas by USFS and the applicant to date to restructure alternatives and identify mitigation. Is there any scenario in which some version (revised scope) of this project could alleviate/mitigate the impacts that we consider critical? If not, what do we expect CEQ to do with our referral? That is a critical point that we need to articulate in our referral letter.

## **Deliberative Process / Ex. 5**

I'll absolutely help you and your team navigate our way through this. Mindy (OW) and I are trying to connect with USCAE colleagues to get a read from them on their inclinations.....will share what we find out as additional data points for consideration.

We're trying to convert the Tuesday 1 pm (est) VTC into a meeting of the Acting AAs and RA. I just don't think we have more time to delay that group of three sharing their thoughts on the best way to approach this.

You shared your issue paper with Ken; what feedback have you received (if any) since then? Has he elevated this topic within the political team to your knowledge?

Separately, I want to talk with you about Kathy's involvement yesterday with CEQ's NEPA meeting. Ted and I spoke; it could be that her best intent may have missed the mark and created some perceptions that me and you will need to deal with. More to follow.

Thanks, Rob

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**From:** Johnson, Kathleen

**Sent:** Wednesday, April 19, 2017 9:02 PM

**To:** Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>

**Cc:** Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Goforth, Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>

**Subject:** RE: R9 weekly report

# Deliberative Process / Ex. 5

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**From:** Tomiak, Robert  
**Sent:** Wednesday, April 19, 2017 3:30 PM  
**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** Re: R9 weekly report

If referral, we need a draft letter by COB tomorrow to start staffing/vetting here.

Rob

On Apr 19, 2017, at 6:13 PM, Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)> wrote:

Including Mindy and John from OW. If you are leaning toward referral, we can't wait until next week. I suggest a coordination call with us and OW soonest to lay out your thoughts and options.

Thanks, Rob

On Apr 19, 2017, at 5:38 PM, Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)> wrote:

Jason reports that the groundwater technical meeting yesterday was a rehash of existing information. Nothing new was presented. We will be updating our RA on Friday. We will try to set up a briefing for you on this early next week and would be happy to have anyone from OW also participate.

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9

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**From:** Tomiak, Robert  
**Sent:** Wednesday, April 19, 2017 6:51 AM  
**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>  
**Subject:** RE: R9 weekly report

Kathleen,

We need an update please. I have conferred with our OW counterparts, and can share that outcome as well. Let's set up a coordination call/brief for this afternoon, or tomorrow morning your time.

Thanks, Rob

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**From:** Johnson, Kathleen  
**Sent:** Monday, April 17, 2017 1:05 PM  
**To:** Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>; Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>  
**Cc:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Cozad, David <[Cozad.David@epa.gov](mailto:Cozad.David@epa.gov)>; Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>  
**Subject:** RE: R9 weekly report

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**From:** Strauss, Alexis  
**Sent:** Monday, April 17, 2017 9:56 AM  
**To:** Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>; Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Cozad, David <[Cozad.David@epa.gov](mailto:Cozad.David@epa.gov)>  
**Subject:** RE: R9 weekly report

I suggest involving the Water programs (Tomas Torres, Jason Brush) after this week's Rosemont meeting, when new info is available. I don't need to be part of that update.

Alexis Strauss  
Acting Regional Administrator  
E.P.A. Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3572

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**From:** Tomiak, Robert  
**Sent:** Monday, April 17, 2017 9:52 AM  
**To:** Strauss, Alexis <Strauss.Alexis@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>  
**Subject:** RE: R9 weekly report

Alexis/Kathleen,

Thanks for sharing the update. I think your staff did a great job of cuing up the issues; however, [REDACTED]

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

With a final biological opinion from USFWS and the expectation that the USACE will issue a 404 permit, perhaps the focus should instead be on what we believe it would take to alleviate our remaining significant concerns, such as specific mitigative measures that we want to see incorporated.

Larry and I think it would be helpful for a quick coordination call on this. What is your availability today?

Thanks, Rob

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**From:** Strauss, Alexis  
**Sent:** Monday, April 17, 2017 12:06 PM  
**To:** Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Subject:** R9 weekly report

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**From:** Strauss, Alexis  
**Sent:** Thursday, April 13, 2017 5:08 PM  
**To:** Weekly Report Group <Weekly\_Report\_Group@epa.gov>  
**Cc:** Nishida, Jane <Nishida.Jane@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>  
**Subject:** R9 weekly report

**HOT ISSUES**

**Unrelated/Unresponsive**

## **Unrelated/Unresponsive**

2. **ROSEMONT (AZ) COPPER MINE:** (FYI) next Tuesday, April 18 in Phoenix, EPA will join the US Forest Service and the Corps of Engineers to discuss water quality and other issues related to the proposed Rosemont copper mine, which we have reviewed under NEPA and CWA. The Forest Service will issue its Record of Decision in May, the Corps its CWA 404 decision some time thereafter. CEQ has been coordinating the multi-agency engagement. I attach a one-page briefing paper and will update Ken W, OW and OECA when EPA decision time nears.

**KEY DECISIONS/ACTIONS:** (FYI, no Administrator action sought)

## **Unrelated/Unresponsive**

**HIGHLIGHTS OF THE PAST WEEK**

## **Unrelated/Unresponsive**

2

**Unrelated/Unresponsive**

3

## **PUBLIC EVENTS**

**Unrelated/Unresponsive**

Kind regards,  
Alexis

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